



South Dakota Unified Judicial System



Record Search Report

Name: HERZBERG, ROBERT ALAN	DOB: [REDACTED]	Gender: M	Party ID: 9002579	UJS ID:
Address: [REDACTED] CO [REDACTED]				
Aliases: HERZBERG, ROBERT ALAN				

Docket Number: 35CRI19-000016 filed in Jackson County on 07/18/2019 Case Status: Pending

Filing Name: HERZBERG, ROBERT ALAN Arrest Date: 07/16/2019 Arrest Time: PCN:

Plaintiff: STATE OF SOUTH DAKOTA Prosecutor: DANIEL VAN GORP

Counsel Name: KINNEY, MATTHEW Counsel Type: Retained (Private) Counsel

Highway Type: CDL: N CMV: N HAZ: N MV: Driver of the Vehicle

Count of 22-42-6 (F3) POSS MORE THAN 10 LB MARIJUANA

Count of 22-42-7 (F3) DIST/POSS W/INTENT DIST 1 LB OR MORE MARJ

Count of 22-42-5.1 (F5) UNAUTHORIZED INGESTION OF CONTROLLED DRUG/SUBSTANCE IN SCHEDULES I OR II

Count of 22-42-15 (M1) INGEST INTOXICANT OTHER THAN ALCOHOLIC BEVERAGE

*** Bond(s) Ordered ***

Cash Bond Posted on 07/26/2019

Status: \$5000.00 Paid in Full 07/26/2019 - Posted by

Proceeding Description	Judge Name	Begin Date	Begin Time	Status Description
Initial Appearance		08/21/2019	9:00AM	Held
Preliminary Hearing		10/23/2019	10:00AM	

The search you requested is a court records search based on information you provided. The search results may include criminal court data from January 1989 to present, civil court data from January 2006 to present, active money judgments for the past twenty years, and/or inactive money judgments since April 2004, DEPENDING ON THE TYPE OF SEARCH REQUESTED. Records returned are only those that precisely match this information. There may be instances where fine and cost information will appear immediately below a dismissed charge. The amounts indicated are accurate for a different charge but there should be no fine and cost information related to a dismissed charge. Based on the age of a case, not all financial information may be available in the case management system. You should contact the Clerk of Court office where an original action took place to correct any misinformation and collect any missing information.

SOUTH DAKOTA HIGHWAY PATROL

PROBABLE CAUSE AFFIDAVIT



State of South Dakota
Jackson County

6th Judicial Circuit
Criminal No. _____

State of South Dakota, plaintiff

-VS-

HERZBERG, ROBERT ALAN [REDACTED] /78, defendant

Offense(s):

22-42-7 - Possession with Intent to Distribute 1 Lb or More Marijuana (F3); 22-42-6 - Possession of Marijuana More than 10 lbs (F3); 32-25-4 - Speeding on Interstate (06-10 MPH Over Limit)(M2)

On July 16th, 2019 I was parked stationary on a median crossover on I-90 at mile marker 148 in Jackson County. At approximately 1720 hours I observed a white Chevrolet Tahoe traveling eastbound that appeared to be traveling faster than the posted 80MPH speed limit. I activated my front radar antenna and received a speed reading of 86MPH. I pulled out from the crossover and began to catch up to the vehicle. As I was catching up to the vehicle I again activated my front radar antenna and received a speed reading of 83MPH on the white Tahoe. Once behind the Tahoe I activated my emergency lights and the Tahoe came to a stop near mile marker 151. The Tahoe was bearing California license plate [REDACTED] 2. I made contact with the lone male driver through the driver's side window and told him the reason for the stop. I asked the driver for his driver's license and vehicle registration. The driver handed me a Colorado driver's license identifying him as Robert Herzberg and a rental agreement for the vehicle. While at the vehicle I could smell the strong odor of raw marijuana coming from within the vehicle. I asked Mr. Herzberg to come back to my patrol car and he did.

In my patrol car I told Mr. Herzberg that I would be issuing him a courtesy warning for his speed and asked him about his trip. Mr. Herzberg told me that he was taking a load of hemp to Minneapolis. I then told Mr. Herzberg that I would be searching the vehicle because I could smell the odor of raw marijuana. I placed Mr. Herzberg in the back seat of my patrol vehicle while I searched the Tahoe.

A search of the Tahoe revealed approximately 292lbs of raw marijuana that were in two large white sacks in the back passenger area of the Tahoe.

I placed Mr. Herzberg under arrest for possession of marijuana and possession of marijuana with intent to distribute.

B. L. [Signature]

STATE OF SOUTH DAKOTA
CIRCUIT COURT, JACKSON CO.

FILED

JUL 30 2019

Cari Bachand Clerk
By Cari [Signature] Deputy

* Trp Benjamin Filipiak HP 74
South Dakota Highway Patrol

Dated: 7/18/19

Subscribed and sworn to before me this _____ day of _____.

Notary Public

My Commission expires: _____
(Seal)

CR19-16

State of South Dakota			
COMPLAINT			
OFFICIAL USE ONLY OF THE MAGISTRATE COURT			
State of South Dakota		Judicial Circuit 6th	
County of Jackson		Incident #	
vs. HERZBERG			
UNIFORM COMPLAINT - SUMMONS			
THE UNDERSIGNED OFFICER COMPLAINS AND STATES THAT No. 8615785-HP			
On or About	At or Near (Location/Milepost)	Intersection	At Time
07/18/2019	MM 161 I 90		05:26 PM
City Limits of	Lat	Long	
WITHIN THE COUNTY AND STATE AFORESAID			
Name (Last, First, Middle)		Sex	
HERZBERG, ROBERT ALAN		M	
Address		Eyes	Hair
		BLU	BRO
City / State / Zip	Telephone	Date of Birth	
Driver's License Number		State	
		CO	
Did Unlawfully	Operate Passenger Other	Vehicle Year / Make / Model / Style / Color	
		2018 Chevrolet Suburban SUV White	
No License	Vehicle License No.	Type	State Ins VIN (No License Plate)
		PC CA	Yes
Trailer License No.		Trailer Make	State
AND THEN AND THERE COMMITTED THE FOLLOWING OFFENSE(S) TO WIT			
In Violation of	SDCL	PST:	
Return Required			
Code	Description	Amount	
22-42-6	Possession of Marijuana More than 10 lbs (F3)	\$	
22-42-7	Possession with Intent to Distribute 1 Lb or More Marijuana (F3)	\$	
		\$	
TOTAL		\$0.00	
Comments			
Speeding <input type="checkbox"/> Interstate <input type="checkbox"/> Municipal <input type="checkbox"/> Other <input type="checkbox"/> Udar <input type="checkbox"/> Pace <input type="checkbox"/> School Zone <input type="checkbox"/> Construction			
Lidar Fl. 0	Actual 0	M.P.H. 0	M.P.H. Zone 0
<input type="checkbox"/> Haz Mat Vehicle <input type="checkbox"/> Commercial Vehicle	HP #	Emp. ID	Officer Issuing Summons
<input type="checkbox"/> 16 PAS <input type="checkbox"/> CDL <input type="checkbox"/> Accident <input type="checkbox"/> DUI	74		Filipiak, Benjamin
Above Complaint is True and I Verily Believe Officer Signed in Presence of Court or Notary		Date	
		7/18/19	
Subscribed and Sworn to Me This Date (Name and Title)			
Cami Leland, Dep.			
<input type="checkbox"/> CASH RECEIVED BY OFFICER		Court Address	
<input checked="" type="checkbox"/> POWER OF ATTORNEY		JACKSON COUNTY CLERK OF COURTS	
<input type="checkbox"/> COURT APPEARANCE REQUIRED		PO BOX 128	
At (Time)	Court Date To Be Set	KADOKA, SD 57543-0128	
		(605) 837-2122	
		(Pay Fines at Clerk of Courts)	
Parents (If Juvenile)			
Parent First Name			
Parent Last Name			



CITATION INFORMATION

PETTY OFFENSES: If charged with a petty offense involving the operation and use of a motor vehicle, and you possess or have proof of a valid South Dakota driver's license, you may choose alternative 1, 2, 3 below. If unable to meet the license requirement, or if charged with a non-traffic offense, you may choose alternative 2 or 3 below. Upon refusal of the following alternatives, you will be taken immediately to a magistrate for hearing.

1. **Promise to Appear.** You may sign the complaint as a written promise to appear. Intentional failure to appear is a Class 2 Misdemeanor.
2. **Admission and Deposit.** You may sign a stipulation admitting allegations in the complaint which, together with the required deposit, will be filed with the clerk of courts.
3. **Deposit.** You may immediately mail said deposit to the clerk of courts or personally make the deposit, either alternative to be in the presence of the officer. Refer to schedule of petty offenses for amount required for the deposit.

If you chose alternative 2 or 3 and do not appear in court on the date specified, the clerk will enter judgment against you and will forfeit your deposit. You may appear in court after signing an admission and the court may, upon motion, relieve you from the stipulation and effects thereof.

Mail to: **JACKSON COUNTY CLERK OF COURTS**
PO BOX 128
KADOKA, SD 57543-0128

If you intend to appear in court to contest this citation, it is recommended that you contact the Clerk of Courts Office listed on the citation before the indicated court date.

POWER OF ATTORNEY

I hereby deposit with the Clerk of Courts of Jackson County, South Dakota as a cash appearance bond the sum of \$ 0.00. If desired to contest this matter, I will appear at the date, time and place for my initial appearance or contact the Clerk of Courts before that date and ask the clerk to reschedule the date for my initial appearance. If I do not appear (or contact the clerk of courts within the time period or if after the court date is set, I fail to appear), I hereby plead guilty to the charge and direct the Clerk to apply the money deposited as bond herewith to the payment of the fine and cost assessed against me.

I have read this document and have been given a copy.

B615785-HP

Signed

In Custody
 Defendant Date

Save Time. Pay Online.
 Visit [HTTPS://UJSportal.SD.GOV/PORTAL](https://ujsportal.sd.gov/portal)
 It may take up to 7 business days for your citation to be available online.

STATE OF SOUTH DAKOTA
 CIRCUIT COURT, JACKSON CO.
FILED

JUL 18 2019

Gari Bachand Clerk
 By Cami Leland Deputy

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
) ss	
COUNTY OF JACKSON)	SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)	CRI 19-16
Plaintiff,)	
)	NOTICE OF APPEARANCE
vs.)	AND
)	REQUEST FOR DISCOVERY
ROBERT ALAN HERZBERG,)	
Defendant.)	

NOTICE OF APPEARANCE

NOTICE IS HEREBY PROVIDED TO YOU, State of South Dakota, by and through Jackson County State's Attorney Daniel Van Gorp, Kadoka, South Dakota 57543, that the undersigned, Matthew J. Kinney, Spearfish, South Dakota, hereby notes his appearance as Counsel of Record for Defendant in the above-captioned matter. Please direct all correspondence and inquiries concerning the Defendant to these offices.

REQUEST FOR DISCOVERY TO PROSECUTING AUTHORITY

COMES NOW, Defendant Robert Herzberg, by and through his attorney of record, Matthew J. Kinney of Spearfish, South Dakota, and hereby requests discovery of the following materials presently in the possession, custody or control of the plaintiff pursuant to SDCL Chap. 23A-13.

1. Please furnish copies of any and all written, recorded, unsigned, oral or electronically recorded statements, admissions, confessions, or declarations allegedly made by the Defendant or copies of such statements in the possession, custody or control of the State which are relevant to the acts charged in the Indictment, the existence of which is known or by the exercise of due diligence may become known to the State's Attorney;
2. Please disclose when, where, and in whose presence any statements, admissions, confessions, or declarations of the Defendant were allegedly made;
3. Please disclose who advised the Defendant of his constitutional rights; where, when and how was he advised of said constitutional rights; and whether he made any statements, admissions, or confessions prior to having been advised of his rights;
4. Please provide a copy of the Defendant's prior criminal records;

NOTICE OF APPEARANCE AND REQUEST FOR DISCOVERY
State v. Robert Herzberg, CRI 19-16

5. Please furnish copies or otherwise permit inspection of any and all evidence, books, papers, documents, photographs, videotapes, audiotapes, tangible objects, buildings or places, or copies or portions of them which are in the possession, custody or control of the State's Attorney, which are intended for use by the State's Attorney as evidence in chief at any and all hearings and/or trial in this matter.

6. Please furnish copies or otherwise permit inspection of any results or reports of physical or mental examination and of scientific tests or experiments, or copies of them, which are in the possession, custody or control of the State's Attorney, the existence of which is known or by the exercise of due diligence may become known to the State's Attorney, and which are material to the preparation of the case as evidence in chief at any and all hearings and/or trial in this matter.

7. Please furnish copies of any and all statements in the possession of the State's Attorney which were made by any and all witnesses or prospective witnesses of the state or any department or agency of the state, to include any Grand Jury testimony of any witnesses.

8. If there was an informant or such other person or persons who provided information regarding the Defendant or the arrest of the Defendant, please provide:

- A. The names and addresses of all persons who provided such information.
- B. The specific information provided by the informant or other person.
- C. Whether the informant or other person was paid or if any type of bargain was struck with the informant or other person, and if so, the specifics of the agreement.

9. Please provide copies of the criminal records of all witnesses, other than law enforcement officers, that the State intends to call as part of their case in chief.

10. Please provide copies of any and all waivers signed by the Defendant.

11. Please disclose and produce any other exculpatory evidence. If at any time prior to or during any hearing/trial in this matter you discover additional evidence or material which has previously been requested or ordered and which is subject to discovery or inspection you are hereby requested to notify the undersigned attorney or party or the Court of the existence of such additional evidence or material. This request is being made pursuant to SDCL 23A-13-15.

NOTICE OF APPEARANCE AND REQUEST FOR DISCOVERY
State v. Robert Herzberg, CRI 19-16

DATED this 22nd day of July, 2019.

KINNEY LAW, P.C.

By: /s/ Matthew J. Kinney
Matthew J. Kinney
Attorney for Defendant
121 W. Hudson
P.O. Box 729
Spearfish, SD 57783
(605) 642-2147
Email: matt@kinney-law.com

CERTIFICATE OF SERVICE

I, Matthew J. Kinney, do hereby certify that on the 22nd day of July, 2019, I caused a true and correct copy of the foregoing **NOTICE OF APPEARANCE and REQUEST FOR DISCOVERY** to be served upon Mr. Daniel Van Gorp, Attorney at Law, Jackson County State's Attorney's Office, PO Box 219, Kadoka, South Dakota 57543, by electronic service through Odyssey File and Serve.

/s/ Matthew J. Kinney
Matthew J. Kinney

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF: JACKSON

6th JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA

CHARGES: Possession Marijuana more than 10 lbs.
Possession W/ intent to distribute 1lb or more of
Marijuana.

Vs.

STATE OF SOUTH DAKOTA
CIRCUIT COURT, JACKSON CO.

FILED

JUL 26 2019

DEFENDANT: Robert Alan Herzberg

File #: _____

Cari Bachand Clerk
By *Cami Feltz* Deputy

**ORDER SPECIFYING METHODS AND
CONDITIONS OF RELEASE**

1. ORDER

PERSONAL RECOGNIZANCE UNSECURED BOND	<input type="checkbox"/> The defendant promises to appear at all scheduled hearings.
	<input type="checkbox"/> The defendant will execute a bond binding him/her to pay _____ County the sum of \$____ in the event he/she fails to appear as required.
10% DEPOSIT	<input type="checkbox"/> The defendant will execute a bond binding him/her to pay _____ County the sum of \$_____ and will deposit with the Clerk of Courts the sum of \$_____ not being more than 10% of the amount of bond.
CASH OR SURETY BOND	<input type="checkbox"/> The defendant will execute a bond in the amount of \$5000.00 <input checked="" type="checkbox"/> CASH ONLY (By the deposit of an equal amount of cash.) CASH/SURETY (May secure by the undertaking of sufficient sureties.)

I AGREE TO TAKE CUSTODY OF THE DEFENDANT AND TO SUPERVISE THE DEFENDANT AS SET FORTH BELOW. I
FURTHER AGREE TO USE EVERY EFFORT TO ASSURE THE DEFENDANT'S APPEARANCE AT ALL SCHEDULED HEARINGS
BEFORE THIS COURT AND TO NOTIFY THIS COURT IMMEDIATELY IF THE DEFENDANT VIOLATES ANY CONDITION OF
HIS/HER RELEASE OR ATTEMPTS TO DISAPPEAR. **ALSO, I UNDERSTAND THAT ANY CASH POSTED FOR BOND IS THE
PROPERTY OF THE DEFENDANT AND WILL BE USED TO PAY THE DEFENDANT'S FINES, COSTS, COURT-APPOINTED
ATTORNEY FEES, AND RESTITUTION.**

-
1. That the defendant appears in Magistrate/Circuit Court for the above-named circuit as follows:
Time: 9:00am Date: 07/24/2019 in KADOKA, SD at the Jackson County Court House.
 2. That the defendant does not leave the above-named circuit without prior written permission or order of the
Court, except in accordance with the orders or warrants of any other Court of competent jurisdiction.
 3. That the defendant abides by any judgment entered in any matter by surrendering himself to serve any
sentence imposed and obeys any order or direction in connection with such judgment as the court
imposing it may prescribe.
 4. That the defendant will not violate a state or federal law or municipal ordinance.

5. That the defendant will keep the court or his/her attorney, if represented by counsel, advised of his/her whereabouts at all times.

6. The defendant will also comply with each of the following conditions:

- ☐ No Contact with alleged victim(s) residence or place of employment
- ☐ No entering bars
- ☒ No possession/consumption of drugs.
- ☐ Must submit to random PBT'S or UA'S by law enforcement at defendant's cost
- ☐ Participate in 24/7 Sobriety Program _____ 2 times daily PBT's _____ weekly UA's _____ times a week
- ☐ Submit to voluntary warrantless search of home, person, and /or vehicle
- ☐ Sign waiver of extradition
- ☒ Obey all local, state, federal laws, make all court appearances

BOND SET BY: Magistrate C. Bachand
ARREST DATE: 07/16/2019

PCN: 119040304
DOB: [REDACTED]

3. Failure to Appear

If the defendant appears as ordered and otherwise obeys and performs the foregoing conditions of this bond, then this bond is declared void. If the defendant fails to obey or perform any of the conditions, payment of the amount of this bond shall be due forthwith. Any judge or magistrate having cognizance of the above-entitled matter at the time of such breach may declare forfeiture of this bond for any breach of its conditions. If the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in such Court of this State against each debtor jointly and severally for the amount above stated, together with interest and costs. Execution may be issued and payment secured as provided by the South Dakota code of Criminal Procedure and other laws of the State of South Dakota. It is agreed and understood that this is a continuing bond (including any proceedings on appeal or review), which shall continue, in full force and effect until such time as the undersigned is duly exonerated.

FAILURE TO APPEAR AT THE TIME REQUESTED MAY RESULT IN THE CONVICTION OF A CLASS FIVE FELONY (5 years imprisonment in the state penitentiary and/or a fine of \$5,000 may be imposed) IF THE FAILURE TO APPEAR OCCURRED IN A FELONY CASE. FAILURE TO APPEAR IN A MISDEMEANOR CASE MAY RESULT IN A PENALTY OF ONE YEAR IN THE COUNTY JAIL OR A \$2,000 FINE OR BOTH.

I, **Robert Alan Herzberg**, understand the methods and conditions of my release, which have been checked above, and the penalties and forfeitures applicable in the event I violate any condition or fail to appear as required. I agree to comply fully with each of the obligations imposed on my release and to notify this Court promptly in the event I change the address indicated below.

DEFENDANT: x [Signature] DATE: 07-18-19 DOB: [REDACTED]
Address: [REDACTED] Zip: [REDACTED] Phone: [REDACTED]

Your copy of this Order/Bond constitutes your authority for the commitment of the defendant until such time all conditions of release are complied with.

You are directed to produce the defendant before the appropriate magistrate or judge at the time and place specified above, if the defendant is still in your custody.

Based upon the above, it is ORDERED that the defendant be released upon compliance with all terms and conditions set forth herein.

DATE: 7/20/19

[Signature]
Magistrate/Circuit Court Judge

Sheriff's Telephone Number (605)837-2285
Clerk of Courts Telephone Number: (605) 837-2122
2284

States Attorney Telephone Number: (605)837-

STATE OF SOUTH DAKOTA
CIRCUIT COURT, JACKSON CO.

FILED

JUL 30 2019

STATE OF SOUTH DAKOTA)

IN THE CIRCUIT COURT

: SS *Cari Bachand* Clerk
COUNTY OF JACKSON) By *Cari Bachand* Deputy

SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
Plaintiff,

vs.

ROBERT ALAN HERZBERG,
DOB: [REDACTED]
Address: [REDACTED]

Defendant.

CR No. 35CRI19-000016

COMPLAINT

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA

SDCL 22-42-7
(Class 3 Felony)

POSSESSION OF MARIJUANA

SDCL 22-42-6
(Class 3 Felony)

1. The undersigned being duly sworn upon oath charges that on or about the 16th day of July, 2019, in the County of Jackson, State of South Dakota ROBERT ALAN HERZBERG did then and there, wrongfully and unlawfully, commit the public offenses of:
2. COUNT 1: **POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA**, a Class 3 Felony, in that he did knowingly possess with intent to distribute one pound or more of marijuana, in violation of SDCL 22-42-7;
3. COUNT 2: **POSSESSION OF MORE THAN TEN POUNDS OF MARIJUANA**, a Class 3 Felony, in that he did knowingly possess more than ten pounds of marijuana, in violation of SDCL 22-42-6;
4. Contrary to statute in such case made and provided against the peace and dignity of the State of South Dakota.
5. Complainant states that this Complaint is based upon the attached probable cause affidavit by Trooper Benjamin Filipiak.

Dated this 29th day of July, 2019.

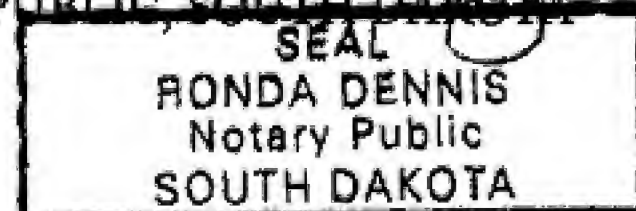
Daniel G. Van Gorp
Daniel G. Van Gorp
Jackson County State's Attorney

Subscribed and sworn to before me this 29th day of July, 2019.

My Commission Expires
April 6, 2023

My Commission Expires: _____

Ronda Dennis
NOTARY PUBLIC, SOUTH DAKOTA



STATE OF SOUTH DAKOTA)
: SS
COUNTY OF JACKSON)

IN THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
Plaintiff,)
vs.)
ROBERT ALAN HERZBERG,)
DOB: 06-04-1978)
Address: 176 Antler Way)
Red Feather Lakes, CO 80545)
Defendant.)

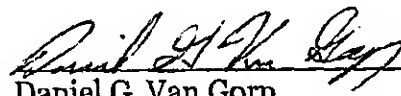
STATE OF SOUTH DAKOTA)
CIRCUIT COURT, JACKSON CO.)
FILED)
AUG 20 2019)
Cari Bachand Clerk)
By Deputy)

CR No. 35CRI19-000016
AMENDED COMPLAINT
POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA
SDCL 22-42-7
(Class 3 Felony)
POSSESSION OF MARIJUANA
SDCL 22-42-6
(Class 3 Felony)
UNAUTHORIZED INGESTION OF A
CONTROLLED SUBSTANCE
SDCL 22-42-5.1
(Class 5 Felony)
INGESTING SUBSTANCE
SDCL 22-42-15
(Class 1 Misdemeanor)

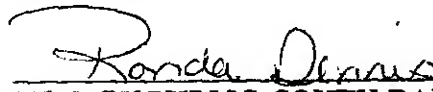
1. The undersigned being duly sworn upon oath charges that on or about the 16th day of July, 2019, in the County of Jackson, State of South Dakota ROBERT ALAN HERZBERG did then and there, wrongfully and unlawfully, commit the public offenses of:
2. COUNT 1: **POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA**, a Class 3 Felony, in that he did knowingly possess with intent to distribute one pound or more of marijuana, in violation of SDCL 22-42-7;
3. COUNT 2: **POSSESSION OF MORE THAN TEN POUNDS OF MARIJUANA**, a Class 3 Felony, in that he did knowingly possess more than ten pounds of marijuana, in violation of SDCL 22-42-6;
4. COUNT 3: **UNAUTHORIZED INGESTION OF A CONTROLLED DRUG OR SUBSTANCE**, a Class 5 Felony, in that he did knowingly ingest a controlled drug or substance, or did have a controlled drug or substance in an altered state in his body, that was not obtained directly or pursuant to a valid prescription or order from a practitioner while acting in the course of the practitioner's professional practice, **to-wit: Cocaine, a Schedule II substance**, in violation of SDCL 22-42-5.1; and

5. **COUNT 4: INGESTING SUBSTANCE, OTHER THAN ALCOHOL, FOR THE PURPOSE OF BECOMING INTOXICATED**, a Class 1 Misdemeanor, in that he did intentionally ingest, inhale, or otherwise take into his body any substance, except alcoholic beverages, for the purpose of becoming intoxicated, to-wit: **Marijuana**, in violation of SDCL 22-42-15;
6. Contrary to statute in such case made and provided against the peace and dignity of the State of South Dakota.
7. Complainant states that this Complaint is based upon the attached reports from Troopers Benjamin Filipiak and Dylan Dowling and the attached chemist's affidavit.

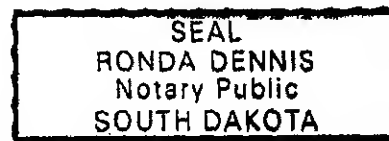
Dated this 19th day of August, 2019.


Daniel G. Van Gorp
Jackson County State's Attorney

Subscribed and sworn to before me this 19th day of August, 2019.


NOTARY PUBLIC, SOUTH DAKOTA

My Commission Expires: _____
My Commission Expires April 6, 2023



SOUTH DAKOTA HIGHWAY PATROL

Web: dps.sd.gov/enforcement/highway_patrol/



Case HP19003637CR

Printed on August 14, 2019

Status	Active
Report Type	Case Report
Primary Officer	Benjamin Filipiak
Investigator	None
Reported At	07/16/19 17:21
Incident Date	07/16/19 17:21
Incident Code	DRUG : DRUG
Location	MM 151 I 90
Zone	Jackson
Beat	HP Badlands
Disposition	Closed - Charges Filed
Disposition Date/Time	07/17/19 20:43
Review for Gang Activity	None
Asst Officers	
60 - Dowling, Dylan; 391A - Haugen, Matt	

STATE OF SOUTH DAKOTA
CIRCUIT COURT, JACKSON CO.
FILED
AUG 20 2019
Cari Bachand Clerk
By _____ Deputy

Arrestee

HERZBERG, ROBERT ALAN

Male, DOB [REDACTED]

22-42-6 - Possession of Marijuana More than 10 lbs (F3)
22-42-7 - Possession with Intent to Distribute 1 Lb or
More Marijuana (F3)

Cited

HERZBERG, ROBERT ALAN

Male, DOB [REDACTED]

22-42-7 - Possession with Intent to Distribute 1 Lb or
More Marijuana (F3)
22-42-6 - Possession of Marijuana More than 10 lbs (F3)

Offender

HERZBERG, ROBERT ALAN

Male, DOB [REDACTED]

22-42-7 - Possession with Intent to Distribute 1 Lb or
More Marijuana (F3)
22-42-6 - Possession of Marijuana More than 10 lbs (F3)

Vehicles

[REDACTED] CA - (Traffic Stop)

CA - (Warning, Citation)

2018 White Chevrolet Tahoe

CA - (Citation)

2018 White Chevrolet Tahoe

Primary Narrative By Benjamin Filipiak, 07/21/19 19:38

Herzberg Arrest

On July 16th, 2019 I was parked stationary on a median crossover near mile marker 148 I-90 in Jackson County. At approximately 1720 hours, I observed an eastbound white Chevrolet Tahoe that appeared to be traveling faster than the posted 80 mile per hour speed limit. I activated my front radar antenna and received a speed reading of 86 miles per hour. I pulled out from the crossover and began to catch up to the Tahoe, as I was catching up to the Tahoe I observed that it was passing a semi. I again activated my front radar antenna and received a speed reading from the Tahoe of 83 miles per hour. I got behind the Tahoe and activated my emergency lights. The Tahoe came to a stop near mile marker 151 and was bearing California license plate [REDACTED]. I approached the Tahoe on the passenger side and contacted the lone male driver through the passenger side window. At the passenger side window, I could immediately smell the strong odor of raw marijuana coming from within the Tahoe. I also observed a ball cap on the front passenger seat that said, "Take a hit man". I told the driver the reason I stopped him and asked him for his driver's license and registration. The driver handed me a Colorado driver's license that identified him as Robert Herzberg, Mr. Herzberg also handed me the rental agreement for the Tahoe. While Mr. Herzberg was handing me the requested information he asked me how my day was going. I told Mr. Herzberg that it was going fine. I then asked Mr. Herzberg to come back to my patrol car with me and he did.

In my patrol car I told Mr. Herzberg that I would be issuing him a courtesy warning for his speed. While running a registration check on the Tahoe and a driver's license check on Mr. Herzberg, I asked Mr. Herzberg about his trip. I asked Mr. Herzberg "what brings you out this way"? Mr. Herzberg replied "on my way to Minneapolis" I asked Mr. Herzberg what he had going on in Minneapolis.? Mr. Herzberg replied, "I have a hemp delivery". I observed that Mr. Herzberg seemed to be nervous evident by his heavy breathing and his heartbeat visible through his shirt. While running the registration and driver's license checks Mr. Herzberg made the statement "what a beautiful day it is though, I've never been through this way." I asked Mr. Herzberg if he had ever made this trip before and he said he hadn't. I observed that on the rental agreement the pick-up date and time for the Tahoe was on July 15th, 2019 at 10:24pm in Denver CO and that the Tahoe was due to be returned on July 16th, 2019 at 7:00pm in Saint Paul MN. I also saw that the estimated total charge for the rental was 493.07 dollars. I asked Mr. Herzberg if he would just make his delivery and then come right back and he said "yep, I'm running a little bit late, so I got to try and catch my flight on the way back". Mr. Herzberg told me that he works for a CBD extraction company. I asked Mr. Herzberg how long he had been with the company and he told me eight months. I asked Mr. Herzberg about the odor of marijuana and he told me "oh yeah the whole, whole cars full of hemp so that's what you're smelling", "there's no way you couldn't smell that". I asked Mr. Herzberg where in Minneapolis he was taking the hemp to? Mr. Herzberg told me that he had the address in his phone and was unable to tell me where in Minneapolis it was going. I asked Mr. Herzberg how much he had in the vehicle and he told me 300 pounds. I asked Mr. Herzberg how much he usually got paid for his trips. Mr. Herzberg told me that he was getting a thousand dollars for this trip. I asked Mr. Herzberg if his flight back was paid for also and he said yes. A short time passed where neither I or Mr. Herzberg were talking while I was finishing the warning process. Mr. Herzberg again asked me "how' everything going". After printing off the warning and explaining it to Mr. Herzberg I told him that I would be searching his vehicle due to the odor of raw marijuana coming from it. I asked Mr. Herzberg if the only thing that was in the vehicle was his load. And he stated yes. Mr. Herzberg then told me that he had a little bit that he took from the back in his cigarette pack to sample. I observed that when I would ask Mr. Herzberg about his trip or the load he was hauling that he would become more nervous. I searched Mr. Herzberg finding nothing illegal on his person and secured him in the back seat of my patrol car while I searched the Tahoe.

A search of the Tahoe revealed two large white sacks that contained a green leafy substance that looked and smelled like raw marijuana. I field tested the green leafy substance and it tested positive for marijuana. I also located a green

leafy substance in a cigarette pack along with a half smoked cigarette on the center console of the Tahoe. I found this odd since if this was for "sampling" purposes why would it be placed with a half-smoked cigarette.

I placed Mr. Herzberg in handcuffs, checked for proper fit and double locked them and secured him in the back seat of my patrol car. I secured the Tahoe and had Shads Towing of Kadoka respond to my location. Shad's loaded the vehicle and I remained behind the Tahoe until Shads brought it to the Murdo DOT shop for further inspection.

At the Murdo DOT shop I met with Trooper Dylan Dowling. Trooper Dowling interviewed Mr. Herzberg and assisted me in processing the Tahoe. The Marijuana was seized by Trooper Dowling. The Marijuana was placed in the back of Trooper Dowling's pickup to be taken to Pierre evidence. The marijuana was later found to have an approximate weight of 292 pounds.

The vehicle was released to Shads Towing. All personal property that remained in the vehicle can be picked up at any time.

I transported Mr. Herzberg to the Prairie Post gas station in Presho where he was turned over to a Winner transport Officer to be taken to the Winner Jail.

South Dakota Highway Patrol
Trooper Ben Filipiak

Property / Evidence

Item #	Category	Type	Status	Location	Description
HP19003637CR		Digital	In Digital Files		Digital Photo - Digital Photo of #1 Seed Bag Filled with 147LB of Marijuana
HP19003637CR		Digital	In Digital Files		Digital Photo - Digital Photo of #2 Seed Bag Filled with Marijuana 145 LB
HP19003637CR		Digital	In Digital Files		Digital Photo - Digital Photo of #2 Seed Bag Filled with Marijuana 145 LB
HP19003637CR		Digital	In Digital Files		Digital Photo - Digital Photo of #1 Seed Bag Filled with 147LB of Marijuana
HP19003637CR-001		Digital	In Digital Files		Digital Photo - P1040338
HP19003637CR-002		Digital	In Digital Files		Digital Photo - P1040339
HP19003637CR-003		Digital	In Digital Files		Digital Photo - P1040340

Item #	Category	Type	Status	Location	Description
HP19003637CR-004		Digital	In Digital Files		Digital Photo - P1040341
HP19003637CR-005		Digital	In Digital Files		Digital Photo - P1040342
HP19003637CR-006		Digital	In Digital Files		Digital Photo - P1040343
HP19003637CR-007		Digital	In Digital Files		Digital Photo - P1040344
HP19003637CR-008		Digital	In Digital Files		Digital Photo - P1040345
HP19003637CR-009		Digital	In Digital Files		Digital Photo - P1040346
HP19003637CR-010		Digital	In Digital Files		Digital Photo - P1040347
HP19003637CR-011		Digital	In Digital Files		Digital Photo - P1040348
HP19003637CR-012		Digital	In Digital Files		Digital Photo - P1040349
HP19003637CR-013		Digital	In Digital Files		Digital Photo - P1040350
HP19003637CR-014		Digital	In Digital Files		Digital Photo - P1040351
HP19003637CR-015		Digital	In Digital Files		Digital Photo - P1040352
HP19003637CR-016		Digital	In Digital Files		Digital Photo - P1040353
HP19003637CR-017		Digital	In Digital Files		Digital Photo - P1040354
HP19003637CR-018		Digital	In Digital Files		Digital Photo - P1040355
HP19003637CR-019		Digital	In Digital Files		Digital Photo - P1040356
HP19003637CR-020		Digital	In Digital Files		Digital Photo - P1040357
HP19003637CR-021		Digital	In Digital Files		Digital Photo - P1040358
HP19003637CR-022		Digital	In Digital Files		Digital Photo - P1040359
HP19003637CR-023		Digital	In Digital Files		Digital Photo - P1040360
HP19003637CR-024		Digital	In Digital Files		Digital Photo - P1040361

Item #	Category	Type	Status	Location	Description
HP19003637CR-025		Digital	In Digital Files		Digital Photo - P1040362
HP19003637CR-026		Digital	In Digital Files		Digital Photo - P1040363
HP19003637CR-027		Digital	In Digital Files		Digital Photo - P1040364
HP19003637CR-028		Digital	In Digital Files		Digital Photo - P1040365
HP19003637CR-029		Digital	In Digital Files		Digital Photo - P1040366
HP19003637CR-030		Digital	In Digital Files		Digital Photo - P1040367
HP19003637CR-031		Digital	In Digital Files		Digital Photo - P1040368
HP19003637CR-032		Digital	In Digital Files		Digital Photo - P1040369
HP19003637CR-033		Digital	In Digital Files		Digital Photo - P1040370
HP19003637CR-034		Digital	In Digital Files		Digital Photo - P1040371
HP19003637CR-035		Digital	In Digital Files		Digital Photo - P1040372
HP19003637CR-036		Digital	In Digital Files		Digital Photo - P1040373
HP19003637CR-037		Digital	In Digital Files		Digital Photo - P1040374
HP19003637CR-038		Digital	In Digital Files		Digital Photo - P1040375
HP19003637CR-039		Digital	In Digital Files		Digital Photo - P1040376
HP19003637CR-040		Digital	In Digital Files		Digital Photo - P1040377
HP19003637CR-041		Digital	In Digital Files		Digital Photo - P1040378
HP19003637CR-042		Digital	In Digital Files		Digital Photo - P1040379
HP19003637CR-043		Digital	In Digital Files		Digital Photo - P1040380
HP19003637CR-044		Digital	In Digital Files		Digital Photo - P1040381
HP19003637CR-045		Digital	In Digital Files		Digital Photo - P1040382

Item #	Category	Type	Status	Location	Description
HP19003637CR-046		Digital	In Digital Files		Digital Photo - P1040383
HP19003637CR-047		Digital	In Digital Files		Digital Photo - P1040384
HP19003637CR-048		Digital	In Digital Files		Digital Photo - P1040385
HP19003637CR-049		Digital	In Digital Files		Digital Photo - P1040386
HP19003637CR-050		Digital	In Digital Files		Digital Photo - P1040387
HP19003637CR-051		Digital	In Digital Files		Digital Photo - P1040388
HP19003637CR-052		Digital	In Digital Files		Digital Photo - P1040389
HP19003637CR-053		Digital	In Digital Files		Digital Photo - P1040390
HP19003637CR-054		Digital	In Digital Files		Digital Photo - P1040391
HP19003637CR-055		Digital	In Digital Files		Digital Photo - P1040392
HP19003637CR-056		Digital	In Digital Files		Digital Photo - P1040393
HP19003637CR-057		Digital	In Digital Files		Digital Photo - P1040394
HP19003637CR-058		Digital	In Digital Files		Digital Photo - P1040395
HP19003637CR-059		Digital	In Digital Files		Digital Photo - P1040396
HP19003637CR-060		Digital	In Digital Files		Digital Photo - P1040397
HP19003637CR-061		Digital	In Digital Files		Digital Photo - P1040398
HP19003637CR-062		Digital	In Digital Files		Digital Photo - P1040399
HP19003637CR-063		Digital	In Digital Files		Digital Photo - P1040400
HP19003637CR-064		Digital	In Digital Files		Digital Photo - P1040401
HP19003637CR-065		Digital	In Digital Files		Digital Photo - P1040402
HP19003637CR-066		Digital	In Digital Files		Digital Photo - P1040403

Item #	Category	Type	Status	Location	Description
HP19003637CR-067		Digital	In Digital Files		Digital Photo - P1040404
HP19003637CR-068		Digital	In Digital Files		Digital Photo - P1040405
HP19003637CR-069		Digital	In Digital Files		Digital Photo - P1040406
HP19003637CR-070		Digital	In Digital Files		Digital Photo - P1040407
HP19003637CR-071		Digital	In Digital Files		Digital Photo - P1040408
HP19003637CR-072		Digital	In Digital Files		Digital Photo - P1040409
HP19003637CR-073		Digital	In Digital Files		Digital Photo - P1040410
HP19003637CR-074		Digital	In Digital Files		Digital Photo - P1040411
HP19003637CR-075		Digital	In Digital Files		Digital Photo - P1040412
HP19003637CR-076		Digital	In Digital Files		Digital Photo - P1040413
HP19003637CR-077	Seized	Physical	In Custody	SDHP Evidence S1	Drug - #1 Seed Bag Filled with 147LB of Marijuana
HP19003637CR-080	Seized	Physical	In Custody	SDHP Evidence S1	Drug - #2 Seed Bag Filled with 145 LB of Marijuana
HP19003637CR-083	Evidence	Physical	In Custody	SD Health Lab	Article - 1 UA Sample from Robert Herzberg
HP19003637CR-084	Evidence	Physical	In Temporary Custody	SDHP Pierre	Article - Iphone 10 Gold
HP19003637CR-085	Seized	Physical	In Temporary Custody	SDHP Pierre	Article - Rental Agreement



STATE OF SOUTH DAKOTA
DIVISION OF CRIMINAL INVESTIGATION
OFFICE OF THE ATTORNEY GENERAL
GEORGE S. MICKELSON CRIMINAL JUSTICE CENTER
PIERRE, SOUTH DAKOTA 57501-8505
PHONE (605) 773-3331
FAX (605) 773-4629

Case 20191968NR

Printed on July 22, 2019

Status	Approved
Report Type	Narrative Report
Primary Officer	Dylan Dowling
Records Technician	
Reported At	07/17/19 08:56
Incident Date	07/16/19 18:40
Incident Code	
Location	I 90 MM 151
Zone	CEN
Beat	Jackson
Disposition	Active (Open)
Disposition Date/Time	07/18/19 08:56

Case Comments

Trooper Filiplak conducted a traffic stop on I 90 near mile marker 151. During the traffic stop Trooper Filiplak could smell the smell of marijuana coming from the vehicle. A search of the vehicle revealed approximately 292 lbs of marijuana.

Offense Information

Offense Possession of Marijuana More than 10 lbs (F3) ,
Statute 22-42-6
NIBRS Code 35A - Drug/Narcotic Violations
Counts 1
Include In NIBRS No
Completed Yes
Bias Motivation None (no bias)
Location Highway/Road/Alley
Entry Forced No
Criminal Activities Possessing/Concealing

Offense Possession with Intent to Distribute 1 Lb or More Marijuana (F3)
Statute 22-42-7
NIBRS Code 35A - Drug/Narcotic Violations
Counts 1
Include In NIBRS No
Completed Yes
Details Offender(s)
Used
Drugs
Bias Motivation None (no bias)
Location Highway/Road/Alley
Entry Forced No
Criminal Activities Possessing/Concealing

Offender

HERZBERG, ROBERT ALAN

Male, DOB [REDACTED]
[REDACTED]

22-42-6 - Possession of Marijuana More than 10 lbs (F3)
22-42-7 - Possession with Intent to Distribute 1 Lb or
More Marijuana (F3)

Vehicles

[REDACTED] CA

2018 WHITE Chevrolet Tahoe
Owner Pv Holding Corp

Primary Narrative By Dylan Dowling, 07/19/19 12:49

Robert Herzberg

On July 16, 2019, I received a phone call from South Dakota Highway Patrol Sergeant John Lord advising SDHP Trooper Benjamin Filipiak was requesting assistance with a traffic stop with approximately 300 pounds of a green leafy substance consistent with marijuana. He advised the suspect was transporting on Interstate 90 near mile marker 151 in Jackson County, South Dakota. Sergeant Lord advised Trooper Filipiak would be transporting the suspect and vehicle to the Murdo DOT Lot. I responded to assist Trooper Filipiak.

I contacted Trooper Filipiak at the Murdo DOT Lot. Trooper Filipiak advised he stopped a California plated vehicle for speeding. While speaking to the driver, whom was identified as Robert Alan Herzberg, he could smell the strong odor of marijuana coming from the vehicle. A probable cause search of the vehicle revealed two large seed bags containing a green leafy substance consistent with marijuana.

I contacted Robert, who was seated in the back seat of Trooper Filipiak's patrol. I introduced myself to Robert and showed him my credentials. Robert advised he would like to use the rest room. I asked Robert if he would be willing to provide a voluntary urine sample. Robert advised he would.

I escorted Robert to the bathroom and obtained a urine sample from him. The urine sample was sealed and remained in my custody until it was hand delivered to the State Health Lab in Pierre, SD. I escorted Robert to my vehicle and asked him to have a seat in my front passenger seat.

I again showed Robert my credentials. I explained to Robert that I work with a Federal Drug Task Force and would like to speak with him regarding the traffic stop. I read Robert his Miranda Rights. I read the rights verbatim from a South Dakota Law Enforcement and Training issued Miranda Warning card. Robert understood his rights and agreed to speak with me. The following is merely a synopsis of my conversation with Robert. For complete and exact verbiage of the conversations please refer to the audio recording, which can be found attached to this case under Property/Evidence.

Interview: Robert Herzberg

Robert provided a date of birth [REDACTED], a cellular telephone number of [REDACTED], and an address of [REDACTED]. Robert advised he is currently employed in the extraction process of hemp. Robert later advised he works in the marijuana business helping with the extraction process and marketing. While speaking with Robert, I observed Robert appeared to overly nervous, evident by me seeing his heart beat through his t-shirt and his breathing appeared to be labored.

Robert advised he was traveling from Boulder, Colorado to Minneapolis, Minnesota. I asked Robert what was the product he was transporting. Robert advised he was transporting what he believed to be hemp for a CBD Company. Robert identified the company as Pixilit Company and the company was owned by Russell Lester. Robert advised he is getting paid \$1000.00 US currency to transport the product. Robert stated "It's obvious my intent was not to transport marijuana. Because as you can see it's not packaged. It's not drug marijuana." Robert advised he works with Russell and assisted with the extraction process. Robert talked about how its cheaper to transport the hemp rather than complete the extraction process in Colorado.

Robert advised the address of the place the product was going to was on his cellular phone and he did not know who or the name of the business. Robert advised he had the lab results showing the THC content of the material located in the vehicle on his cellular phone. I asked Robert if he has ever made any prior trips before, Robert advised this was his first trip.

I explained to Robert that the product looked and smelled like marijuana. Robert advised he believed the product to be hemp. I asked Robert to explain the extraction process. Robert advised they soaked the marijuana in ethanol and evaporate the ethanol through a short distillation. I asked Robert what he was transporting to Minnesota, Robert advised it was raw hemp biomass.

Robert advised he asked Russell multiple times prior to leaving Colorado if the product was "hot". I asked Robert if he knew the THC content of that material located in the vehicle, Robert advised he believed it was .03% THC. I asked Robert if he would show me the lab report on his cellular phone, Robert advised he would.

I provided Robert with his cellular phone. Robert began to search his email but was unable to locate a lab report. As Robert was looking for the lab report on his cellular phone, I again observed his nervousness had not subdued but had become more pronounced. I could still see his heart beat through his t-shirt, his breathing was labored, and now his hands were shaking as he searched for the lab report.

Robert began talking about how he could not afford to go to jail and advised he would be willing to work. I explained to Robert since he is not from the area it would be difficult for him to work since he did not know anyone in South Dakota.

I asked Robert for consent to search his cellular phone. Robert advised he did not wish to provide me consent to search his cellular phone but would provide the pass code for his cellular phone. Robert advised the pass code is [REDACTED]

I thanked Robert for his cooperation and time and concluded my conversation with him.

I took possession of two large seed bags containing a green leafy substance consistent with marijuana, rental agreement, and Robert's cellular phone. Robert's cellular phone was a gold iPhone X [REDACTED] I transported the evidence to the FBI's Pierre RA.

On July 17, 2019, I weighed the two large seed bags, bag 1 weighted 147 pounds and bag 2 weighed 145 pounds, total weight 292 pounds. The two seed bags were transported to the SDHP Pierre Intake and placed in a secure area.

On July 18, 2019, I applied for and was granted a state search warrant for Robert's cellular telephone by the Honorable Judge Christina Klinger. For more details of search warrant and all related documents, which are attached the case. Once the results of the search warrant are available, they will be outlined and added to the case.

TFO Dylan Dowling

NPSTDTF



South Dakota Public Health Laboratory

615 East 4th Street
Pierre, SD 57501
(605) 773-3368
www.doh.sd.gov/lab

Dylan Dowling
P.O. Box 1797
Aberdeen, SD 57402

Report Date: 08/15/2019
Specimen #: 2019UA02970
Agency Case #: HP19003637CR
County: Jackson

Subject

Robert Herzberg

Date Received: 07/19/2019
Delivery Method: Hand Delivered by
Dylan Dowling
Specimen Source: urine

Seal Date: 07/16/2019
Seal Initials: Not Provided
Date Collected: 07/16/2019
Collector Initials: DD

Specimen Comment: The charges for testing this specimen has been billed to the SD Drug Control Fund. Please request restitution/cost for this testing to be paid to: SD Drug Control Fund 1302 E. Highway 14 Suite 5 Pierre, SD 57501

Comprehensive Drug Screen

Creatinine

Amine Screen

Opiates Screen

Chemist: Cody Geffre

Method: Immunoassay

87 mg/dL

Negative

Negative

Test Fee: \$30.00

THC-COOH Confirmation

THC-COOH

Chemist: Cody Geffre

Method: GC/MS

275 ng/mL

Test Fee: \$20.00

Cocaine Confirmation

Cocaine

Benzoyllecgonine

Test Comment: Benzoyllecgonine is the primary metabolite of Cocaine.

Chemist: Cody Geffre

Method: GC/MS

1118 ng/mL

20277 ng/mL

Test Fee: \$20.00

Total Fee: \$70.00